

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 714/2010**

Decided on 15.02.2011

IN THE MATTER OF :

DEVINDER KUMAR @ BITTU Petitioner
Through: Mr. Jitender Singh, Advocate

versus

STATE Respondent
Through: Mr. M.N. Dudeja, APP for the State

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

- | | |
|--|-----|
| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present revision petition is filed by the petitioner under Section 397 of the Cr.PC praying *inter alia* for quashing of the judgment and order dated 11.10.2010 passed by the learned ASJ, Rohini Courts, Delhi, dismissing his appeal against the judgment of conviction dated 30.11.2009 passed by the learned Metropolitan Magistrate, convicting the petitioner under Section 279/304A IPC. However, the order dated 04.12.2009 on the point of sentence, passed by the learned Metropolitan Magistrate, whereunder the petitioner was sentenced to undergo rigorous imprisonment for a period of three months for the offence punishable under Section 279 IPC and rigorous imprisonment for a period of one year with a fine of ₹8,000/-, and in default, to undergo rigorous imprisonment for three months

for the offence punishable under Section 304A IPC, was modified in appeal and reduced to rigorous imprisonment for a period of six months alongwith a fine of ₹8,000/- under Section 304A IPC and in default thereof, to undergo simple imprisonment for one month.

2. The case as set up by the prosecution was that on 12.03.1997 at about 7:25 PM, the petitioner, who was the driver of a Blue Line bus No. DL-1P-4352, stopped the bus for passengers to alight near Bus Stand route No.908, Sultan Puri, Delhi. When the deceased Shri Kirpal Singh was alighting from the bus, the petitioner drove the bus quickly without noticing the fact that the said passenger was still alighting from the bus. The deceased fell down from the bus, sustained injuries under the rear tyres of the bus and subsequently succumbed to his injuries and died. As a result, the petitioner was charged for the offences punishable under Sections 279/304A IPC. After the investigation was completed, charge sheet was filed against the petitioner and charges framed. The petitioner claimed that he was not guilty and as a result, the matter was taken to trial.

3. Before the trial court, the prosecution examined seven witnesses including, PW-1, Shri Gurcharan Singh, the complainant and a co-passenger and PW-2, Shri Gulab Singh, also a co-passenger travelling in the same bus. After conclusion of the prosecution evidence, statement of the petitioner was recorded, wherein he claimed to be innocent but chose not to lead any evidence in defence. The trial court considered all the material on record including the testimony of the witnesses and ultimately convicted the petitioner under Section 279/304A IPC vide judgment dated 30.11.2009. Under the order on sentence dated 04.12.2009, the petitioner was

sentenced to undergo rigorous imprisonment for a period of three months for the offence punishable under Section 279 IPC and rigorous imprisonment for a period of one year with a fine of ₹8,000/- in default thereof, to undergo rigorous imprisonment for three months for the offence punishable under Section 304A IPC.

4. Aggrieved by the aforesaid judgment of conviction and the order on sentence, the petitioner filed an appeal before the Sessions Court, wherein the counsel took various grounds to assail the impugned judgment. The learned ASJ considered the submissions made on behalf of the petitioner and after analyzing the evidence on record in the light of the rival contentions, concluded that the prosecution had clearly proved beyond any doubt that the petitioner was driving the bus in question on the date of the incident, and that the said bus was being driven rashly and negligently by the petitioner resulting in the death of the deceased Shri Kirpal Singh. It was observed that the judgment of the trial court was well supported by reasons and did not deserve any interference. However, considering the plea of the petitioner that he was the sole bread winner in the family having three children and he was not a previous convict and that he had faced trial for almost 12 years, the sentence imposed on him was reduced to six months' rigorous imprisonment alongwith a fine of ₹8,000/-, in default thereof, to undergo simple imprisonment for one month under Section 304A IPC. The sentence of three months imposed on the petitioner under Section 279 IPC was maintained and both the sentences were directed to run concurrently with benefit given to the petitioner under Section 428 Cr.PC.

The Sessions Court, however, rejected the plea of the petitioner for being released on probation.

5. Aggrieved by the aforesaid judgment, the present revision petition is filed. Twofold arguments have been raised before this Court to assail the impugned order. In the first instance, counsel for the petitioner states that the statement of the deceased as recorded on 12.03.1997 cannot be treated as a dying declaration as the deceased ultimately expired on 20.05.1997, after a period of 2 months 8 days from the date of making the statement. The second leg of the arguments urged on behalf of the petitioner is that the statement of the deceased was not supported by the two public witnesses, PW-1 and PW-2, who were present on the date of the incident and that there were material contradictions in their deposition. Learned APP for the State, however, denies the aforesaid submission and supports the impugned judgment by stating that the statement of the deceased as recorded on 12.03.1997 can certainly be treated as a dying declaration under Section 32 of the Indian Evidence Act as the said statement discloses the cause of the death and the circumstances which resulted in his death. He further states that the contradictions between the testimony of PW-1 and PW-2 were insignificant and not so material as to discard them.

6. Having carefully examined the impugned judgment including the testimonies of the witnesses as also the record of the case, this Court is of the opinion that the impugned judgment does not suffer from any illegality, arbitrariness or infirmity, which deserves interference in the exercise of its powers under Section 397 of the Cr.PC. It may further be noted that the

power of revision vested in the High Court under Sections 397 and 401 is a limited power to be exercised only under exceptional circumstances. The scope of revisional jurisdiction of the High Court has been elaborated upon by the Supreme Court in the case of T.N. Dhakkal v. James Basnett reported as **(2001) 10 SCC 419**, holding it to be a discretionary jurisdiction to be exercised to correct miscarriage of justice and further, whether or not, there is *justification* for the exercise of such jurisdiction, would depend upon the facts and circumstances of each case. In the case of Farida Dar v. State reported as **2001 (59) DRJ 94**, it was further opined that at the stage of revision, a meticulous examination of the material on record need not to be undertaken.

7. Both the arguments raised on behalf of the petitioner were duly considered by the learned Sessions Court, who noticed the same in para 20 of the impugned judgment and went on to observe that as per the testimony of the Investigating Officer only when the deceased was declared fit to give a statement by the doctor, was his statement recorded as Ex.PW-3/M. It is an admitted position that the said contention of the Investigating Officer was not challenged by the petitioner at any stage and consequently, the same has attained finality. Merely because the deceased expired after about two and a half months of making his statement on 12.03.1997, can hardly be a ground to ignore the said statement and not treat it as a dying declaration under Section 32 of the Indian Evidence Act, 1879, more so when the statement relates to the cause of the death of the deceased and explains the circumstances leading to his death. Hence, it is held that the trial court was justified in treating the statement of the deceased, recorded by the Investigating Officer on 12.03.1997, as a dying declaration.

8. Insofar as the contention of the counsel for the petitioner as to the contradictions in the testimonies of PW-1 and PW-2 is concerned, the said argument was also considered by the learned ASJ, who observed in the impugned judgment that though there were apparent contradictions in the testimonies of PW-1 and PW-2, regarding the manner of the accident, however, the same were not so material as to make the entire prosecution story unbelievable. It was noticed that the underlying stand of PW-1 and PW-2, which emerged from their statements including the statement of the deceased was that the accident took place due to rash and negligent driving on the part of the petitioner.

9. Fact of the matter is that on the date of the accident, when the deceased and PW-1 and PW-2 were alighting from the bus at Sultan Puri Bus Stand, the petitioner suddenly drove the bus towards Jagdamba Market at a great speed, which resulted in the deceased falling down from the bus and sustaining injuries on both his legs, which got crushed under the rear tyre of the bus, because of which the left leg of the deceased had to be amputated. As per the post mortem report, Ex.PW6/A, the death of the deceased occurred due to septicemia as a result of the vehicular accident. The post mortem report indicated that the left leg of the deceased had to be amputated and right thigh showed a fracture. The same version of events has been supported by PW-1 and PW-2, in their testimonies and hence, it cannot be said that there were any material contradictions in their testimonies, which go to the root of the prosecution case. Hence, the second plea of the petitioner is also turned down as not sustainable.

10. This Court concurs with the finding of the learned ASJ that from the deposition of PW-1, PW-2 and the deceased, Shri Kirpal Singh, it appears that each of them gave a different account of the incident in their respective statements, but the common factor which emerges is that the accident took place due to rash and negligent driving on the part of the petitioner/accused, which resulted in the death of the deceased, who was a passenger on the bus and was alighting from it on the fateful day. In such circumstances, no leniency ought to be shown to the petitioner by permitting him to claim the benefit of being released for the period already undergone by him as pleaded by the counsel for the petitioner. It was incumbent on the petitioner, as a driver of a bus, to adhere to road discipline and to ensure the safety of the passengers travelling in the bus, both at the time of their boarding and alighting from it. However, in the present case, the petitioner failed to drive the bus in a responsible manner, inasmuch as he drove the bus away, while passengers were still alighting from the bus, which resulted in the deceased falling down from the bus and his legs getting crushed under the rear tyres of the bus. Further, records reveal that the petitioner continued to drive the bus, without even stopping to assist the deceased or take him to the nearest hospital for medical aid.

11. The present petition is, therefore, dismissed as there is no infirmity in the impugned judgment, nor is there any miscarriage of justice for exercising the discretionary jurisdiction in favour of the petitioner.

FEBRUARY 15, 2011
rkb

(HIMA KOHLI)
JUDGE